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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 || LARRY BOWOTO, et al., No. C 99-02506 SI

9 | Plaintiffs,

10 || v.

11 || CHEVRON CORPORATION, et al.,

12 | Defendants.

**ORDER RE: DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT ON
PLAINTIFFS' CLAIMS 10 THROUGH 17**

14 On March 2, 2007, the Court heard argument on defendants' motion for summary judgment
15 on plaintiffs' claims 10 through 17. Having considered the arguments of the parties and the papers
16 submitted, and for good cause shown, the Court hereby rules as follows.

BACKGROUND

19 Plaintiffs filed this suit in 1999, seeking to recover for a series of brutal attacks that plaintiffs
20 allege occurred in Nigeria in mid-1998 and early 1999. The following is a summary of the relevant
21 context, and of the parties' conflicting versions of the incidents giving rise to plaintiffs' lawsuit.

23 || I. Nigeria

24 The report of plaintiffs' expert Michael Watts is helpful in providing the general historical,
25 cultural and geographical context of this case. It states:

26 Nigeria is unquestionably one of the most important countries on the African
27 continent. Located in West Africa, it has the largest population (roughly 140 million
28 people by current estimates) [of any] African state. It accounts for almost half of West
Africa's population and 40% of the region's GDP. Nigeria is approximately 923,768 sq
kms – that is to say, roughly twice the size of California. Located north of the equator,

1 Nigeria is fully within the tropics. . . . The southern part of Nigeria is entirely coastal
2 with a coastline of 853 kms; that part of the Atlantic Ocean is customarily referred to as
3 the Bight of Benin or more expansively the Gulf of Guinea. The coastline is dominated
4 in its eastern part by the River Niger, which empties into the Atlantic Ocean through an
enormous delta (the Niger Delta).

5 While Nigeria is, in climatic and ecological terms, a tropical country, the northern
6 part of Nigeria is dry and dominated by savanna (mixed woodland and grassland), while
7 the south is wetter, more humid and overwhelmingly forested. . . . The Delta is . . . a
monsoon regional, in which rainfall is distributed throughout the year, and in which hot
8 and humid conditions predominate (relative humidity is always above 80%). Mean
monthly temperatures vary between 24 degrees C [(75.2 degrees F)] and 32 degrees C
[(89.6 degrees F)] throughout the year. Mean annual rainfall varies from 2000-4500 mm
[(78-177 inches)]. Rain falls every month of the year with a short dry spell in January-
March.

9 The vegetation of the Niger Delta is overwhelmingly forest of different
10 ecological types. In the immediate coastal regions, mangrove forests predominate. . . .
11 Mangrove ecosystems are integral parts of both marine life and human food systems
12 because many types of species of fish and marine life depend upon and reproduce in the
unique mangrove environment that characterizes the Niger Delta. Like tropical
13 rainforest environments in general, the mangrove ecosystem is particularly fragile. The
Niger Delta contains the world's third largest mangrove forest and the most extensive
14 freshwater swamp forests in West and Central Africa. The Niger Delta also contains one
of the last and largest remaining areas of primary tropical rainforest on the African
continent, and is therefore a critical region for the preservation of biodiversity.

15 Further inland in the Delta, in areas that are not saline, freshwater swamps and
16 tropical rainforests interspersed with areas cleared for intensive agriculture – most in the
hands of small family farmers – is the dominant vegetation type.

17 A key dimension of understanding the Niger Delta is understanding the balance
18 between fresh and saltwater. In areas close to the Atlantic Ocean, the presence of
19 salinity (which may change seasonally in relationship to precipitation and the volume of
20 river flow) fundamentally shapes vegetation and human livelihood strategies. The
21 maintenance of zones of freshwater in these areas is therefore particularly important.
The effect of changes in land use and human intervention (for example, dredging or
22 deforestation) can fundamentally alter the balance of fresh and saltwater. Accordingly,
saltwater intrusion into freshwater areas can deleteriously affect agriculture and
23 livelihood systems in the Delta.

24 The mangrove forests and the geography of the Delta make human movement
25 difficult, and, accordingly, most people travel by boat through the many creeks, rivers
26 and channels that constitute the Niger Delta. Since 1960, the Nigerian government has
27 provided modern forms of transportation infrastructure such as roads and bridges, but
28 large parts of the Niger Delta (especially the southern and coastal regions) remain largely
without road transportation and dependent upon boat traffic.

29 The current boundaries of Nigeria and its constitution as a modern nation-state,
30 is a product of the so-called imperial Scramble for Africa of the last quarter of the 19th
31 century. In the context of intense competition between European colonial powers, Great
32 Britain carved Nigeria out of a complex mosaic of indigenous political systems. For
example, the northern boundary of Nigeria bisected one of the largest and most powerful
33 traditional states in West Africa. By the early twentieth century, Britain had created two
34 Protectorates covering the northern and southern parts of what is now Nigeria. They

were amalgamated in 1914 and so secured the current borders of Nigeria. These borders included a vast number of different cultures, ethnic groups and traditional political systems, which, prior to this time, had no identification with an entity called "Nigeria."

According to the World Bank, Nigeria currently comprises about 200 different ethnic groups, 500 indigenous languages and two major religions (Islam and Christianity). This diversity is entirely a product of the process by which Nigeria was created as a colonial entity. To that extent, Nigeria is entirely the product of external imposition, drawing together people of very different cultural, religious and ethnic affiliation who, prior to 1900, may have had very little in common. At Independence one of its most important leaders Obafemi Awolowo, said that Nigeria was not a country but a "mere geographical expression". Nigeria is a classic case of an African multi-ethnic state created by the often violent process of colonization.

While English is Nigeria's national language (a legacy of colonial rule), the country is nonetheless characterized by enormous linguistic diversity. For most Nigerians, their first language remains their indigenous tongue. For example, as it applies to this case, the first language of the Ijaw people is Ijaw, and the first language of the Ilaje people is Ilaje. The Niger Delta is an area of especially diverse languages, perhaps the most diverse in all of Nigeria.

Nigeria was a British colony for almost 50 years after amalgamation, gaining independence in 1960. Throughout the colonial period, Nigeria was administered through colonial indirect rule. In practice, this meant that the British established regional systems of government that were associated with the largest ethnic groups and ruled through local ethnic elites; the Hausa in the north, the Yoruba in the west, the Ibo in the east. The effect of colonial rule, therefore, was to establish a strongly regional and ethnic system of politics, in which local regional ethnic elites worked on behalf of the colonial administration through systems of Native Administration. As a consequence, the many and smaller ethnic groups (in Nigerian parlance, "ethnic minorities"), were largely marginal to the process of colonial economic and political development.

At independence, the new Nigerian federal system was dominated by three powerful ethnic-religious groups. The country had a relatively weak central system of federal authority. From the moment of its birth, Nigeria was accordingly characterized by intense ethnic political competition and deep political instability. This took the form of struggles and conflicts between the regional (meaning ethnic and religious) political parties over access to government revenues and development initiatives.

At Independence Nigeria was born as a federal system comprised of five regions. In 1968, a twelve-state system came into effect and over time the number of states has grown to thirty six. This growth of states is a reflection of the attempt to create a sort of political stability by granting to key ethnic communities their own states through which they can gain access to government revenues, which after 1970 increasingly meant oil wealth.

At independence and for a decade thereafter, the primary source of government revenues, and therefore the object of political activity, were agricultural export commodities Commercial production of petroleum began in the late 1950s, but was an insignificant part of Nigeria's exports at this time (amounting to about 1% of government revenues and 1.8% of total exports).

. . . . Nigerian post-independence politics were highly unstable and quickly degenerated into crisis. Amidst a series of deep political conflicts among the regions and political parties between 1960 and 1966, the Nigerian military claimed power in a 1966

coup led by Major General Ironsi. Shortly thereafter, the eastern region, which included the Niger Delta, seceded from the nation, declaring themselves the independent state of Biafra. One of the contributory factors to the secession by the eastern region was the realization that oil located in the Niger Delta promised enormous wealth for those who controlled it. So began the bloody Nigerian civil war between 1967-1970.

The civil war, which resulted in the defeat of the Biafran forces and the reincorporation of the eastern region into the federation, marked the beginning of a long and almost uninterrupted 30-year period of military rule in Nigeria. Until the election of President Obasanjo in 1999, Nigeria was ruled over by a succession of autocratic military junta (with the exception of a brief democratic opening between 1979 and 1983). Each state in the federation was presided over by a military governor appointed by the Supreme Military Council. Elections were abolished, the military and security forces expanded, freedom of the press and of speech was radically compromised, arbitrary detention and extrajudicial killings were commonplace, and, in a number of widely-publicized cases, the military were deployed to quell popular dissent.

It is widely held in the scholarly arena that military rule under President Babangida in the [period] from 1985-1993 and especially in the 1990s during the rule of General Abacha[’s] government (1993-1998), was the most violent and dictatorial in the long history of Nigerian military rule. This deepening of autocratic rule and the willingness of military government to subject all manner of political opponents to intimidation, imprisonment, torture and murder went hand in hand with a proliferation of state mismanagement and increasing corruption.

Watts Expert Report (Hoffman Decl. 185) ¶ 15-30.

II. The history of oil production in Nigeria

In the wake of Biafra's defeat, oil output increased markedly. . . . Especially after 1973, when world oil prices increased dramatically as a result of the actions of OPEC, of which Nigeria is a member, Nigerian oil revenues exploded. In 1970, government revenue from oil was 66 million Naira (the Nigerian currency then roughly equal to one US\$); by 1980 it was 10 billion naira. As a consequence, Nigeria was transformed from an agricultural exporting country to an oil nation. Since 1974, oil has annually produced over 90 percent of Nigeria's export income. According to UCLA Professor Michel Ross, one of the leading scholars of the oil industry, in 2000, Nigeria received 99.6 percent of its income from oil, making it the world's most oil-dependent country. [citation]. Currently, as of 2004, oil accounts for 98% of Nigerian exports, 87% of government revenues, and almost half of gross domestic product.

The heart of Nigerian oil production is in the Niger Delta. Both Ondo State and Delta State are located in the Niger Delta.

Oil and gas exploration rapidly intensified in the 1970s, which increased the physical presence of oil companies in the Niger Delta. In practice, this meant that the region became criss-crossed by thousands of kilometers of pipeline, became the location for hundreds of well heads and numerous flow stations and rigs, and witnessed the construction of oil refineries, tankering facilities and other oil infrastructure (most recently liquefied natural gas plants). The operations of the oil companies and the oil service companies brought local communities into direct contact with all aspects of the

1 oil industry.

2 . . .

3 It is estimated by the World Bank that 80 percent of the oil revenue is accounted
4 for by 1 percent of the Nigerian population. Almost three quarters of Nigerians live on
roughly \$1 per day according to the World Bank.

5 *Id.* ¶¶ 32-37.

6 [T]he oil-producing region of Nigeria is known as the Niger Delta, which
7 encompasses eight states within the Nigerian federation, including Ondo and Delta
states, where the plaintiffs in this case are primarily located.

8 The population of the Delta is difficult to estimate because of a lack of reliable
9 census data. According to the 1991 census, the population of the main oil states – Ondo,
Delta, Rivers, Bayelsa – was roughly 12 million. While roughly one-third of the
10 population reside in large industrial centers . . . , the majority of the population is rural.

11 . . . Only 30% of inhabitants of the Delta region have access to potable water;
12 primary and secondary school attendance in the riverine areas is well below the national
average; and child and maternal mortality rates are exceptionally high. [citation]. Most
13 rural Delta inhabitants depend for their livelihoods on small scale agriculture, fishing,
artisanal and trading activities.

14 Unemployment in the remote areas of the Niger Delta is high. . . .
15 [U]nemployment estimates in the riverine areas of Delta state vary, but can be as high
16 as 90 or 95 percent in areas. [citation]. Particularly for the region's youth, employment
opportunities are nonexistent. According to information provided by the state
development agencies, youth unemployment rates are, on average, in excess of 75
17 percent [citation].

18 . . .

19 Although accurate date on poverty rates in the Niger Delta does not exist, one
estimate is that the GNP per capita is below the national average of USD 260, and even
lower in the riverine and coastal areas. [citation].

20 Statistics provided by the Nigerian government show that . . . the average life
expectancy at birth in the Delta is around 40 years, which is substantially lower than the
21 national average of 46.7 years.

22 . . .

23 Transportation infrastructure in the rural areas is extremely undeveloped. There
24 are very few roads linking rural communities. Rural electrification for the most part does
not exist. Hospitals and pharmacies are typically under-equipped and understaffed. . . .

25 *Id.* ¶¶ 65-74.

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1 **III. Plaintiffs' version of the incidents giving rise to their claims**2 **A. The context of the attacks at issue**

3 According to plaintiffs, during the military regimes governing Nigeria in the 1990s, Nigerian
4 government security forces regularly engaged in the use of excessive force in repressing any perceived
5 threat to oil production in the Niger River Delta region of Nigeria. Plaintiffs' expert, Professor Watts,
6 states in his declaration that:

7 during the successive military regimes of the 1990s, and especially in the period of the
8 Abacha government between 1993 and 1998, the Nigerian government security forces
9 engaged in a course of conduct involving a pattern of violent repression of individuals
10 and communities who organized to oppose or protest aspects of petroleum development
11 in the Niger Delta, and of individuals and communities who were alleged or perceived
12 to be associated with such opposition. . . . A number of military and paramilitary
activities . . . caused untold personal harm, large-scale physical displacement of
communities, the destruction of property, large numbers of deaths (including extra-
judicial killings) and instituted what can only be called a culture of terror. . . . I believe
this is widely recognized and understood by the vast majority of scholars of Nigeria and
by the human rights and foreign policy establishment.

13 Watts Decl. ¶ 18 (citations omitted).

14 In 1999, the Nigerian civilian government formed the “Human Rights Violations Investigation
15 Commission” (the “Oputa Commission”), to investigate human rights abuses committed by prior
16 military regimes. The Commission was headed by Justice Chukwudifu A. Oputa. *See* Watts Decl. ¶
17 19. The Commission held a series of public hearings, in “five centers” throughout the country, on the
18 issues it was investigating. *See* Oputa Comm. Report (Watts Decl., Ex. 1), Vol. I ¶ 2.123. Many of the
19 hearings were nationally televised. *See id.*, Vol. I ¶ 2.124-2.125. The Commission also enlisted
20 “reputable research Centres and other experts drawn from equally reputable civil society organizations
21 and the academia” to conduct “fieldwork” over a period of nine months in the year 2000. *See id.*, Vol.
22 III, “Introduction.” In the Niger Delta, an area populated by approximately 12 million people, according
23 to the report, the Commission employed twelve researchers. *See id.*, Vol. III at 30.

24 On the basis of its investigation, the Oputa Commission concluded that the oil companies’
25 “interests became ‘State interest,’ which must be protected. This logically led to the *systematic and*
26 *generalized violations and abuses*, which occurred in the Niger-Delta during the dark period of military
27 rule in the country, as detailed in . . . this Report.” *Id.*, “Overview” ¶ 1.50 (emphasis added). The report
28 also states that “[t]he politics of oil foregrounds the historical narration of rights violations in Nigeria’s

1 Niger Delta (South-South), *the standard practice being the use of maximum force against the people*
2 *of this region* by an alliance of Trans National Oil Corporations, the state and the indigenous elite.” *Id.*,
3 Vol. 3 at 9 (emphasis added). The report also noted

4 [i]nhuman treatment, violence and repression meted out to communities when they
5 protest against environmental degradation, and neglect of their area by the Nigerian state
6 and the oil-producing companies. The violence, which is usually effected by the police
7 or the military, may be at the instance of the state or the oil multinational corporations.
8 The latter often prefer inviting the security agencies whenever their operations are
9 threatened by the local people, rather than engaging them in genuine dialogue.

10

11 In virtually all parts of the Niger-Delta, an army of occupation is stationed by the federal
12 government to “keep peace” and facilitate the oil exploitation by the oil companies.
13 These fierce-looking military officers largely deny the rights of the citizens to free
14 movement, association and speech. In several instances, those forces unleash terror on
15 the local people. They kill, maim, rape and destroy properties in those communities in
16 the real tradition of an army of occupation.

17 *Id.*, Vol. 3 at 43-44.

18 In addition to these general conclusions from various sources regarding the systematic and
19 widespread nature of government security forces (“GSF”) attacks on civilian communities, plaintiffs
20 also present evidence of several emblematic attacks. For example, in the fall of 1990, GSF killed eighty
21 people and destroyed almost 500 houses in repressing protests at a Shell Oil facility near the village of
22 Umuechem, Rivers State. *See* Watts Decl. ¶ 25; Oputa Comm. Report, Vol. III at 50; Watts Decl., Ex.
23 19 at 2-3; Watts Decl., Ex. 35 at 69. A Nigerian Judicial Commission of Enquiry investigated the
24 Umuechem incident, and concluded that the protest was peaceful, the demonstrators were neither violent
25 nor armed, and the GSF displayed “a reckless disregard for lives and property.” *See* Chomsky Decl.,
26 Ex. 15. In another incident, in 1992, “one person was killed, 30 shot and 150 beaten when local
27 villagers from Bonny demonstrated against Shell.” Watts Decl., Ex. 7 at 19; Ex. 13 at 33.

28 As another example of the violence characterizing the Niger Delta during the period, Professor
29 Watts describes Ogoniland in the 1990s as one of “three main theatres in which human rights violations
30 by the army and security occurred.” Watts Decl. ¶ 26. “[I]t is clear that thousands were displaced, and
31 many hundreds killed and arrested” in Ogoniland, as a result of military repression of oil protestors in
32 the 1990s. *Id.*; *see generally* Plaintiffs’ Corrected Affirmative Statement of Facts in Opposition to
33 Defendants’ Motion for Summary Judgment on Crimes Against Humanity (“PASOF”) (Docket No.

1 1418) ¶¶ 93-116. The Oputa Commission received over 8,000 complaints concerning human rights
2 abuses in Ogoniland. Watts Decl. ¶ 26. In November 1999, GSF attacked the community of Odi in
3 Bayelsa State, and killed between 250 and 2483 civilians. Watts Decl. ¶ 28.

4

5 **B. Parabe (plaintiffs' version)**

6 In 1998, defendants' Nigerian subsidiary, Chevron Nigeria Ltd. ("CNL"), operated the Parabe
7 offshore platform in Nigerian territorial waters approximately 15 kilometers off the coast of the Niger
8 Delta. (Undisputed). Adjacent to the platform was a construction barge, the CBL-101, which was being
9 used for a project to upgrade the platform. (Undisputed).

10 The group involved in the Parabe incident, the Ilaje, are a small tribe of Nigerians most of whom
11 live in relatively remote swamplands and river areas in the southwest delta region of Nigeria, in Ondo
12 State. Plaintiffs' Corrected Opposition to Defendants' Statement of Facts (hereinafter "Docket 1417")
13 at 13. The vast majority of people living in these rural Ilaje communities traditionally make their living
14 and feed their families by agriculture and by fishing from the sea, rivers, swamps and swamplands of
15 the Niger Delta. *Id.* at 13-14. The coastal communities immediately surrounding or close to the Parabe
16 platform were in the catchment area and were Ilaje. *Id.* at 14. The traditional way of living and working
17 in Ilajeland has been severely disrupted by the work of CNL in the region. CNL's activities have
18 depleted the supply of fish and other seafood, have caused erosion and pollution of agricultural lands,
19 and have destroyed sources of fresh water. *Id.* Around the time of the protests, CNL employed only
20 two Ilaje workers out of approximately 2,500 Nigerian employees, despite the fact that as much as 20%
21 of CNL's oil production came from Ilajeland or sites immediately off the coast thereof. *Id.*

22 In 1998, members of 42 Ilaje communities affected by CNL's activities formed a group called
23 the Concerned Ilaje Citizens ("CIC"). Hoffman Decl., Ex. 125 (Declaration of Ola-Judah Ajidibo) ¶
24 8. The CIC wrote to CNL on several occasions, detailing the problems facing the communities. *Id.* ¶
25 10. After further meetings, the Ondo State Government Administrator joined with the CIC in requesting
26 that CNL meet with the CIC. CNL failed to attend any of the meetings. *Id.* After holding a series of
27 meetings, without any response from CNL, the CIC decided to conduct a peaceful protest at the Parabe
28 platform in order to draw attention to their grievances. *Id.* ¶ 12.

1 On May 25, 1998, more than 100 members of the CIC boarded the Parabe platform. Hoffman
2 Decl., Ex. 127 (Bowoto Decl.) ¶ 15. According to one of the leaders of the CIC, Ola-Judah Ajidibo:

3 Before the men left for the Parabe Platform, they were given instructions by the elders
4 and by me at the direction of the elders. The elders and I told them that no one was to
5 carry any firearms or other weapons onto the platform, that no one was to drink alcohol
6 or use other drugs, and that the protest was to be orderly and entirely peaceful. Bola
7 Oyinbo was appointed to lead those men who traveled out to the platform in boats on
8 May 25, 1998. With the approval of the chiefs and leaders, I told Bola that he was to
9 speak with the naval security on the Parabe Platform at his arrival, explain the reason for
10 the protest, and provide the naval officers with copies of our recent letters to Chevron.
11 Again with the approval of the chiefs and elders, I told Bola that he was then to request
12 a meeting with whomever was in charge for Chevron on the platform and that he was to
13 ask that individual to contact [CNL managing director] George Kirkland in order to set
14 up a meeting between Mr. Kirkland and the elders and chiefs onshore.
15

16 *Id.* ¶ 13.

17 The first group of Ilaje, comprised of approximately 25 people, arrived in one speedboat, and
18 five smaller “motorized local boats.” *Id.* ¶ 14. None of them were armed. Approximately five Nigerian
19 Naval officers and four Nigerian Mobile Police were stationed on the platform when the Ilaje arrived;
20 the officers were armed. *Id.* As instructed, the first group of Ilaje to arrive at the platform spoke with
21 the naval security and explained the reasons for the protest. *Id.* ¶ 15. They gave Lieutenant Afolayah
22 copies of the recent letters to Chevron. After speaking with the Ilaje and reviewing the letters,
23 Lieutenant Afolayah allowed the protestors to board the platform. *Id.* The Ilaje then asked the CNL
24 employee in charge to contact George Kirland to arrange a meeting. *Id.*

25 The following day, May 26, CNL personnel Deji Haastrup and James Neku arrived at the
26 platform along with military personnel. *Id.* ¶ 14. CIC leaders who had remained ashore traveled to the
27 platform to meet with Haastrup and Neku. *Id.* Deji agreed on CNL’s behalf to a meeting with the CIC
28 leadership on land, at Ikorigho, the following day. *Id.* On May 27, as arranged, Haastrup and another
CNL employee met with community leaders at Ikorigho. The community leaders continued to pressure
CNL for a direct and personal response from Mr. Kirkland. At the end of the meetings at Ikorigho, Deji
agreed to return to Ikorigho on May 29 with a final response from Mr. Kirkland. *Id.* ¶ 17. Based on this
progress, the community elders instructed Ajidibo to tell Deji that the protestors would leave the barge
on May 28. Ajidibo did so. Ajidibo and several others then traveled to the barge to tell the protestors
to leave the following morning, May 28. *Id.*

1 At no time during the protest did the Ilaje take any hostages. Hoffman Decl., Ex. 127 ¶ 18. The
2 protestors told the CNL workers that they were free to leave. *Id.* At some point during the protests, a
3 CNL employee fell ill, and a CNL helicopter arrived and took him away, without incident. *Id.* None
4 of the protestors were armed, and none threatened or harmed any of the workers. *Id.* ¶ 19.

5 The Ilajes did not request that work on the platform be stopped, and did not attempt to stop work
6 on the platform. Docket 1417 at 17. Oil continued to flow from Parabe during most of the protest. *Id.*
7 at 18. Communications within CNL and between CNL and Chevron USA reflected that the Parabe
8 protest was peaceful. *See id.* Armed members of the Navy and military police remained on the barge
9 and in control at all times. *See id.* at 19. At some point during the protests, additional military
10 personnel arrived at the platform in a “Dolphin Flyer” boat. The navy lieutenant in charge on the
11 platform told them they were not needed, and the boat left. Hoffman Decl., Ex. 297 (Boyo Dep.) at 61-
12 64. Workers and protestors played games, shared meals, watched videos, fished, chatted together, and
13 established friendships during the three-day protest. Docket No. 1417 at 20.

14 Very early on the morning of May 28, while many Ilaje were still asleep, and before they had
15 begun to leave the platform, CNL security personnel and GSF arrived in several CNL-leased helicopters
16 and attacked the protestors. *Id.* ¶ 21. One of the helicopter pilots testified that the GSF began firing
17 from his helicopter before it even landed on the barge helideck. Hoffman Decl., Ex. 302 (Crowther
18 Dep.) at 150:20-152:2, 154:18-156:9. To escape, the Ilaje ran towards shelter or jumped into the sea.
19 Teukolsky Decl. (re: claims 10-17), Ex. 18 at 76:6-16; Ex. 30 at 604:14-605:21. Boats had already left
20 the Ilaje villages on shore to pick up the protestors, as planned, when the attacks began. *See* Hoffman
21 Decl., Ex. 293 at 115-116.

22 The GSF and CNL personnel involved in the attack flew to the Parabe platform in helicopters
23 leased by CNL. The helicopter pilots who flew to Parabe received their instructions from the CNL
24 personnel on board, and not the GSF. *See* Hoffman Decl., Ex. 328 (Ogunjobi Dep.) at 211:1-212:17;
25 Ex. 302 at 79:21-80:8. CNL Escravos Security Coordinator James Neku flew in one of the helicopters.
26 Hoffman Decl., Ex. 325 (Neku Dep.) at 250:21-251:25. In his report on the incident, Neku stated that
27 the GSF were “closely supervised by CNL security.” *Id.*, Ex. 84 (C50-53) at C51. When the helicopters
28 landed on the helideck at Parabe, Neku opened the boot of his helicopter and gave the soldiers whatever

1 was in there, then directed the GSF towards the helideck stairs. *See id.*, Ex. 321 at 63:19-64:4. Neku
2 then went up to the radio room, and gave the soldiers directions using an electric bullhorn. *See id.*, Ex.
3 338 (Peace Dep.) at 65:6-11, 67:6-68:6.

4 Two individuals, including decedent Arolika Irowarinun, were shot and killed by the GSF at
5 Parabe. Mr. Irowarinun was not attacking the soldiers or posing any threat when he was shot. Docket
6 1417 at 38-39. He was shot in the side of the chest, which is consistent with turning away from the
7 gunfire before being shot. Teukolsky Decl., Ex. 29 at 55:11-59:13, 65:3-68:10.

8 Two other plaintiffs, Larry Bowoto and Bassey Jeje, were also shot. Jeje was shot in the arm,
9 and subsequently was hit with a rifle butt. Filios Decl. (filed Nov. 13, 2006), Ex. 2 (Jeje Dep.) at
10 366:17-22, 492:2-15. Bowoto was shot while running towards the GSF, with his hands up, screaming
11 that they were all peaceful protestors, and screaming “What’s going on? What’s going on?” *See id.*,
12 Ex. 3 (Bowoto Dep.) at 597:4-7, 607:22-608:22.

13 Many of the protestors were subsequently arrested and beaten by the GSF. One group of 11
14 protestors was locked in a small container, and beaten with gun butts and horse whips. *See Hoffman*
15 Decl., Ex. 363 at 78-82. They were then taken by the GSF to Escravos by boat. During the boat ride,
16 a GSF told them they were going to be killed. *See id.* at 92:12-94:1. Many of the prisoners were crying
17 during the boat ride. *See id.* at 94:2-8. From Escravos, the prisoners were taken by boat to Warri. *See*
18 *id.* at 94:9-16; *see also* Hoffman Decl., Ex. 313 (Irowarinu Dep.) at 141:18-142:13, 144:11-153:6. After
19 arriving at Warri, the prisoners were placed in a jail cell at a naval base, and told to remove their clothes.
20 *Id.*, Ex. 363 at 94:17-96:8. After removing their clothes, the GSF beat the prisoners with horse whips
21 and gun butts. *Id.* at 97:7-16. After the beating, the prisoners were placed together in a small room,
22 where they were kept for three days. *Id.* at 97:17-24. The GSF then took the prisoners to Akungba, then
23 to Akure. *Id.* at 106:16-107:9; Ex. 313 at 163:4-8, 163:23-164:13. At Akure, the GSF continued to beat
24 the prisoners, and pressured them to confess to crimes. *Id.*, Ex. 363 at 111-115. Among those beaten
25 was Bola Oyinbo, on whose behalf several claims are brought in this case.¹

26

27

28 ¹Bola Oyinbo died three years later in Lagos, Nigeria.

1 **C. Opia and Ikenyan (plaintiffs' version)**

2 Opia and Ikenyan are two small villages located in the Niger Delta. (Undisputed). In late 1998,
3 the Searex drilling rig, under contract to CNL, was located in the general vicinity of Opia and Ikenyan.
4 (Undisputed). On January 3, 1999, members of the Opia village went to the Searex rig to demand
5 compensation for pollution caused by CNL in the community; none of the plaintiffs were among this
6 group. *See* Hoffman Decl., Ex. 367 at 257:4-9, 258:3-259:24; Ex. 360 at 318:4-25, 321:19-24, 340:2-5.
7 The villagers were unarmed. The GSF stationed at the rig detained and beat the villagers with whips
8 and guns. *See id.*, Ex. 304 at 169:20-170:1; Ex. 352; Ex. 353; Ex. 360 at 340, 344; Ex. 367 at 257-259.

9 The following day, another group of villagers from Opia went to the Searex rig. A group of
10 women approached the rig first, and were told by GSF on the rig to go back. *See id.*, Ex. 317 (Lawuru
11 Dep.) at 408. Behind the women was a group of community leaders. As one of the community leaders
12 stood in his canoe to identify the group, the GSF fired gunshots. *See id.* at 409-412; Ex. 314 (Iteimor
13 Dep.) at 235-236; Ex. 306 (Edekou Dep.) at 94, 97.

14 Apparently having heard of the incident at the Searex rig, GSF Captain Kaswe demanded the
15 use of CNL-leased helicopters to take him and his men to the area from Escravos. *See* Hoffman Decl.,
16 Ex. 339 (Pell Dep.) at 120:12-121:19. The Captain and his men were extremely agitated, and strongly
17 demanded that CNL transport them. *See id.*; Ex. 304 at 135:24-136:4. The CNL personnel informed
18 the Captain that he and his men could not be transported until any violence at the Searex rig dissipated.
19 *See id.*, Ex. 339 at 123-124.

20 One or two hours later, at around 12:30 p.m., a CNL-leased helicopter was dispatched by CNL
21 to fly to the Searex rig. Hoffman Decl., Ex. 323 (Meier Dep.) at 32. The helicopter, piloted by Alan
22 Meier, picked up Captain Kaswe and his men from the airstrip, along with Reuben Osazuwa, a high-
23 level CNL security employee. Osazuwa sat in the co-pilot's seat. *Id.*, Ex. 282 (Meier Dep.) at 126. The
24 GSF onboard were fully armed, despite a CNL policy or practice requiring GSF traveling in CNL-leased
25 helicopters to place all ammunition in the boot of the helicopter. *Id.* at 37-38; Ex. 335 (Osazuwa Dep.)
26 at 175.

27 The Searex rig was located about 5 to 7 miles from Escravos. During the flight towards the rig,
28 Osazuwa instructed Meier to deviate from the course and fly over a river. *See id.*, Ex. 323 at 40. The

1 passengers then spotted three canoes on the river. Osazuma exclaimed “they are hiding, they are
2 hiding,” and he instructed Meier to circle around the canoes and slow down. *Id.* at 41-42; Ex. 282 at
3 148. Captain Kaswe then fired five to seven shots in rapid succession. *See id.*, Ex. 282 at 155; Ex. 323
4 at 42; Ex. 88. Osazuwa’s report on the incident stated that the shots were fired immediately after “flying
5 through Opia” and “observ[ing] people . . . hurrying out of the village in their canoes.” *Id.*, Ex. 65 at
6 C116; Ex. 335 at 233. Villagers observed the helicopter over the village, and fled into the bush when
7 shots were fired from the helicopter. *See* Hoffman Decl., Ex. 317 at 426.

8 Later in the day, a military gun boat and a “sea truck attached to the military” left Escravos for
9 the Benin River. The military engaged in a “mopping up exercise with their gun boat,” during which
10 they went to both Opia and Ikenya. *Id.*, Ex. 65 at C117-119. Sea Truck is a company from which CNL
11 leased boats during the relevant time period. *Id.*, Ex. 307 at 24:19-24. The Sea Truck involved in the
12 mopping up exercise was stationed at CNL’s Escravos facility. Fourteen or fifteen GSF boarded the Sea
13 Truck and told the boat crew that they were going on patrol. *Id.* at 5:23-7:9; Ex. 315 at 36:9-38:25. The
14 crew contacted CNL and received approval to take the GSF on patrol. Hoffman Decl., Exs. 315 & 359
15 at 39-40, 65-66; Ex. 307 at 7-23. The boat went first to the Searex rig, then to Opia. The boat docked
16 at Opia and the GSF exited and went into the village with their rifles. The GSF were gone for over an
17 hour. The Sea Truck crew heard shooting in the village and observed smoke and fire coming from the
18 village. *See* Hoffman Decl., Ex. 315 at 44-47; Ex. 307 at 11-14. The crew also observed a man “lying
19 down,” not moving, not far from the water’s edge. *See id.*, Ex. 315 at 68; Ex. 307 at 19.

20 The GSF shot unarmed villagers, killing at least four – Timi Okoro, Kekedu Lawuru, Shadrack
21 Oloku, and Bright Pabulogba – and burned the villages of Opia and Ikenyan to the ground. *See*
22 Hoffman Decl., Ex. 317 at 426, 435-438, 442, 492; Ex. 314 at 169, 190, 192; Ex. 306 at 104, 112-113,
23 206, 277, 306; Ex. 337 at 280, 283, 313, 345-349, 350, 358, 360-361; Ex. 312 at 123, 373-374, 379,
24 386-387; Ex. 294 at 62-65, 67-69, 74-75.

25 At the time of the attack, Opia had approximately 200 to 300 inhabitants and between 50 to 100
26 houses. *See* Hoffman Decl., Ex. 360 at 91; Ex. 367 at 117, 333; Ex. 358 at 40-41. Ikenyan had 200 to
27 300 inhabitants, and approximately 80 to 100 houses. *See id.*, Ex. 364 at 51-52.

28

1 **IV. Defendants' version of the facts²**2 **A. Parabe**

3 Prior to the incident at issue in this case, in March 1998, a group of more than 100 members of
4 the Itsekiri tribe overtook the Parabe barge. Rodriguez Decl., Ex D. ¶¶ 8-9; Ex. E ¶¶ 16-17; Ex. F ¶¶
5 7-8; Filios Decl., Ex. 1 at 56-58, 98-99. CNL requested GSF assistance to prevent the Itsekiri from
6 taking over the platform, and the siege ended peacefully. Rodriguez Decl., Ex. A ¶¶ 7-8; Kollios Decl.,
7 Ex. 75 at C22873-C22874; Ex. 76 at MB005-MB006. CNL and the construction contractor provided
8 additional jobs to the Itsekiri and, to head off similar action by the rival Ilaje tribe, voluntarily provided
9 additional jobs to the Ilaje as well. Rodriguez Decl., Ex. B ¶¶ 4-5; Kollios Decl., Ex. 77 at C24529-
10 C24530; Ex. 76 at MB005-MB006.

11 Plaintiff Larry Bowoto and a group of other Ilajes were dissatisfied with the manner in which
12 their leaders allocated the jobs. Filios Decl., Ex. 6 at 434-441; Ex. 7 at B16-B17. Bowoto and his group
13 complained to CNL that the Itsekiri had “pirated” and held the CBL-101 for ransom and that the
14 Itsekiri had no reason to claim any jobs. *Id.*, Ex. 8 at C12-C14. The representatives of the Ilaje
15 communities advised CNL that Bowoto’s group was not authorized to represent the Ilajes. *Id.*, Ex. 9
16 at C24033.

17 On May 25, 1998, more than 100 Ilaje tribesmen took over the CBL-101 barge, the Parabe
18 platform and the Cheryl Ann tug. CNL reported the invasion to the Nigerian authorities, as it was
19 required to do by law. *Id.*, Ex. 19 at 206-207, 226-227; Babalakin Decl. ¶¶ 39-45. The workers
20 believed they were being held hostage. Filios Decl., Ex. 2 at 70-75; Ex. 20 at 55-58; Ex. 21 at 78-79;
21 Ex. 22 at 61-63; Ex. 23 at 370-371; Ex. 24 at 35-37. The Ilajes did not have permission for over 100
22 Ilajes to board and stay for three days. *Id.*, Ex. 27 at 32-35; Ex. 28 at 492-493; Ex. 29 at 326-327, 452.
23 Work on the barge and platform ceased because the Ilajes’ presence endangered the workers’ safety.
24 *Id.*, Ex. 17 at 67; Ex. 18 at 90; Ex. 4 at 52-53; Ex. 3 at 48-49. The Ilajes blocked the barge and platform
25 helidecks and threatened to burn the barge and tugboat. *Id.*, Ex. 24 at 43; Ex. 21 at 55; Ex. 27 at 100;

26
27 ²Most of the following language is taken directly from defendants’ statement of facts in support
28 of defendants’ motion for summary judgment on plaintiffs’ claim for crimes against humanity (Docket
No. 1261). As with plaintiffs’ various summaries of fact, the Court has reviewed the evidence cited by
defendants and omitted any unsupported propositions and irrelevant citations.

1 Ex. 20 at 61; Ex. 30 at 47-48. Some of the Ilajes engaged in violence against the workers. *Id.*, Ex. 2
2 at 70, 74, 374; Ex. 24 at 30-31, 252; Ex. 22 at 47, 63.

3 After three days of negotiations, CNL's crisis management team decided to seek the assistance
4 of the Nigerian GSF to free their workers, based on reports that the workers on the barge were being
5 held hostage, they were under emotional strain and had been subjected to physical abuse, and CNL's
6 negotiator had been threatened and briefly held hostage by the Ilaje. *Id.*, Ex. 1 at 232-240, 269;
7 Rodriguez Decl., Ex. A ¶ 17. On May 27, 1998, CNL reported the situation to Captain Ita, the head of
8 GSF in Delta State. Filios Decl., Ex. 19 at 227-228, 238. Lieutenant Sadiq told James Neku that he
9 needed use of CNL-leased helicopters to travel to the barge and platform. *Id.* at 243.

10 On the morning of May 28, 1998, approximately seventeen Nigerian military and police led by
11 Lieutenant Sadiq flew to the barge in three helicopters. *Id.* at 243-262; Kollios Decl., Ex. 78 at C21798;
12 Ex. 79 at C21806-C21807; Ex. 80 at C21799. CNL employee James Neku flew to the barge with
13 Lieutenant Sadiq to observe the situation, but he did not have authority to control Lieutenant Sadiq or
14 his men. Filios Decl., Ex. 19 at 237-238, 250; Ex. 32 at 228-229.

15 CNL requested that the hostages' rescue be handled peacefully and thought it would be handled
16 peacefully. Rodriguez Decl., Ex. A at ¶¶ 19, 21; Ex. D ¶¶ 15-18, 21-24; Filios Decl., Ex. 19 at 248-249.
17 The two Ilajes who were shot to death were advancing on the military with pipe spools raised above
18 their heads in a threatening manner. Filios Decl., Ex. 23 at 69-71; Ex. 22 at 74-82; Ex. 27 at 87-92; Ex.
19 20 at 86-90.

21 **B. Opia and Ikenyan**

22 On December 11, 1998, the Ijaws issued the so-called Kaiama Declaration ordering CNL and
23 other oil companies to vacate all the territories claimed by the Ijaws. Rodriguez Decl., Ex. A ¶ 24;
24 Filios Decl., Ex. 43 at C0257. In late 1998, CNL withdrew its operating employees and contractors
25 from, among other places, the Searex rig. CNL also suspended operations at the Searex rig. Filios
26 Decl., Ex. 1 at 128; Kollios Decl., Ex. 85 at C46646.

27 On January 3, 1999, villagers from Opia came to the Searex rig demanding money from CNL.
28 Rodriguez Decl., Ex. A ¶ 26; Filios Decl., Ex. 41 at 44-46; Ex. 44 at 322-327; Ex. 45 at 147-151; Ex.

1 46 at 259; Ex. 47 at C284; Ex. 85 at C20361-C20362. On January 4, 1999, CNL's operations manager
2 in Escravos, Scott Davis, heard an SOS call from the Searex rig. Filios Decl., Ex. 1 at 135. The CNL
3 employee stationed at the Searex rig reported that armed villagers were attacking the GSF providing
4 security for the rig, and that at least one attacker was armed with a gun and dynamite, threatening to
5 blow up the rig and set it ablaze. *Id.*, Ex. 47 at C284.

6 The GSF demanded that CNL immediately provide them with helicopters to take military
7 reinforcements to the rig. *Id.*, Ex. 1 at 135-136; Ex. 42 at 120-121; Rodriguez Decl., Ex. A ¶¶ 27-28;
8 Ex. 48 at 22-24; Ex. 49 at 27. CNL persuaded the GSF to wait until the gunfire had stopped at the
9 Searex rig before allowing the GSF to use helicopters to transport reinforcements to Searex. Filios
10 Decl., Ex. 1 at 135-140; Ex. 42 at 121-127; Rodriguez Decl., Ex. A ¶ 27. Around 12:30 p.m., on
11 January 4, a Nigerian Army Captain fired five to ten rounds out of a CNL-leased helicopter enroute to
12 the Searex rig without any direction or prior knowledge on behalf of CNL. Filios Decl., Ex. 50 at 41-45;
13 Ex. 51 at 171-175; Rodriguez Decl., Ex. A ¶¶ 28, 31-37; Ex. G ¶¶ 7-8; Kollios Decl., Ex. 86 at C21985.
14 The helicopter was not near any village when the shots were fired. Filios Decl., Ex. 50 at 41-45; Ex.
15 51 at 172.

16 No employee of defendants or CNL was present at Opia or Ikenyan on January 4, 1999.
17 Rodriguez Decl., Ex. A ¶ 27; Ex. B ¶ 36; Ex. C ¶ 26; Ex. G. ¶ 12. No employee of defendants or CNL
18 intended, requested or authorized any person, including the Nigerian authorities, to discharge any
19 firearm from a helicopter, to attack or burn the villages of Opia or Ikenyan, or to shoot or injure any of
20 their residents. *Id.*, Ex. A ¶¶ 31, 34; Ex. B ¶ 36; Ex. C ¶ 26; Ex. G ¶ 12; Ex. H ¶ 13; Ex. I ¶ 17.

21

22 **LEGAL STANDARD**

23 The Federal Rules of Civil Procedure provide for summary adjudication when "the pleadings,
24 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show
25 that there is no genuine issue as to any material fact and that the party is entitled to a judgment as a
26 matter of law." Fed. R. Civ. P. 56(c).

27 On a motion for summary judgment, "[i]f the party moving for summary judgment meets its
28 initial burden of identifying for the court those portions of the materials on file that it believes

1 demonstrate the absence of any genuine issues of material fact,” the burden of production then shifts
 2 so that “the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, ‘specific
 3 facts showing that there is a genuine issue for trial.’” *T.W. Elec. Service, Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)); *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103-04 (9th Cir.), cert. denied, 479 U.S. 949 (1986).

7 In judging evidence at the summary judgment stage, the Court does not make credibility
 8 determinations or weigh conflicting evidence, and draws all inferences in the light most favorable to the
 9 nonmoving party. *T.W. Electric*, 809 F.2d at 630-31 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)); *Ting v. United States*, 927 F.2d 1504, 1509 (9th Cir. 1991). The
 10 evidence the parties present must be admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative
 11 testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat
 12 summary judgment. *See Falls Riverway Realty, Inc. v. Niagara Falls*, 754 F.2d 49 (2nd Cir. 1985);
 13 *Thornhill Pub. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). Hearsay statements found
 14 in affidavits are inadmissible. *See, e.g., Fong v. American Airlines, Inc.*, 626 F.2d 759, 762-63 (9th Cir.
 15 1980). The party who will have the burden of proof must persuade the Court that it will have sufficient
 16 admissible evidence to justify going to trial.

19 DISCUSSION

20 I. Secondary liability

21 The first dispute between the parties is whether, and to what extent, plaintiffs can hold CNL
 22 liable for the actions of the GSF. Plaintiffs present several theories of secondary liability.

23 A. Aiding and Abetting

24 “California courts have long held that liability for aiding and abetting depends on proof the
 25 defendant had actual knowledge of the specific primary wrong the defendant substantially assisted.”
 26 *Casey v. U.S. Bank Nat'l Ass'n*, 127 Cal. App. 4th 1138, 1145 (Cal. Ct. app. 2005). Under Nigerian law,
 27 aiding and abetting liability similarly “requires actual knowledge of the crime being committed and
 28 intent to facilitate commission of that crime.” Mot. at 4:13-15, citing Babalakin Decl. ¶¶ 167-170.

1 Defendants contend that CNL had no intent or knowledge that the GSF would engage in the
2 alleged attacks at Parabe or Opia and Ikenyan. In response, plaintiffs present a large quantity of
3 circumstantial evidence, showing that:

- 4 (1) CNL knew of the GSF's general history of committing abuses, including against oil
5 protestors, *see* Plaintiffs' Corrected Affirmative Statement of Facts in Opposition to
6 Defendants' Motion for Summary Judgment on Crimes Against Humanity ("PASOF")
7 (Docket No. 1418) ¶¶ 183-254; *see also supra* BACKGROUND section.
- 8 (2) CNL brought the GSF to Parabe even though the protestors had already agreed to leave,
9 *see id.* ¶¶ 301-304;
- 10 (3) CNL failed to adhere to its practice of requiring GSF to place ammunition in the "boot"
11 of the helicopter, *see* Docket 1417 at 36:13-26, 50:27-51:10;
- 12 (4) One of the GSF, Captain Kaswe, who boarded the helicopters bound for Opia and
13 Ikenyan was "in a high state of agitation," and was "hot-headed," *id.* at 50:15-26;
- 14 (5) CNL personnel, specifically James Neku, "closely supervised" the GSF who landed at
15 Parabe, *see id.* at 8:2-9:22;
- 16 (6) CNL personnel, specifically Reuben Osazuwa, directed the pilot of one of the Opia and
17 Ikenyan helicopters to approach and circle canoes present on the river around the
18 villages; GSF onboard the helicopter subsequently fired at those canoes, *see id.* at 51:11-
19 24; PASOF ¶¶ 337-339;
- 20 (7) CNL paid the GSF generally, and for their services in connection with the incidents at
21 issue, *see* PASOF ¶¶ 458-474; Docket 1417 at 58:10-59:9;
- 22 (8) CNL only paid GSF for services that were "incidental to normal CNL activities" and
23 requested by a CNL "end-user," *see* Docket 1417 at 39:25-40:16;
- 24 (9) Later on the day that GSF fired from the helicopter on Opia and Ikenyan, CNL
25 authorized the GSF to use the CNL-leased Sea Trucks to travel to Opia and Ikenyan, *see*
26 Docket 1417 at 58:10-14; PASOF ¶¶ 342-350; and
- 27 (10) CNL provided transportation to the GSF for all of the incidents at issue here, *see* PASOF
28 ¶¶ 327-328, 343-350, 437-457; Docket No. 1417 at 8:2-9:2.

1 The Court finds that a jury could reasonably infer from this evidence that CNL knew the GSF intended
2 to, and would, commit the torts at issue here. Plaintiffs' aiding and abetting liability theory therefore
3 survives summary judgment.

4

5 **B. Conspiracy**

6 Under California law, conspiracy requires knowledge of a plan to engage in the specific
7 wrongful conduct at issue, and agreement to participate in that plan. *See Kidron v. Movie Acquisition*
8 *Corp.*, 40 Cal. App. 4th 1571, 1582 (1995). “[T]he requisite concurrence and knowledge ‘may be
9 inferred from the nature of the acts done, the relation of the parties, the interests of the alleged
10 conspirators, and other circumstances.’” *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 785 (Cal. Sup.
11 Ct. 1979) (quoting case).

12 Defendants argue that, as with the aiding and abetting theory, plaintiffs cannot show that CNL
13 knew of any plan or intent on the part of the GSF to commit the acts at issue, and cannot show that CNL
14 agreed to such a plan. Plaintiffs argue that the same evidence of aiding and abetting, discussed above,
15 would allow a jury to reasonably infer knowledge and agreement. The Court agrees with plaintiffs. As
16 discussed, plaintiffs present evidence that CNL personnel were directly involved in the attacks; CNL
17 transported the GSF; CNL paid the GSF; and CNL knew that GSF were prone to use excessive force.
18 These facts, among, other, are sufficient to raise a triable issue as to whether CNL knew that GSF
19 planned to attack, and whether CNL agreed with that GSF should commit the attacks.

20

21 **C. Agency**

22 The parties also dedicate a great deal of briefing to the issue of whether CNL can be held
23 vicariously liable for the actions of the GSF through a *respondeat superior* theory.

24 To establish actual agency a party must demonstrate the following elements: “(1) there must be
25 a manifestation by the principal that the agent shall act for him; (2) the agent must accept the
26 undertaking; and (3) there must be an understanding between the parties that the principal is to be in
27 control of the undertaking.” *Rubin Bros. Footwear, Inc. v. Chemical Bank*, 119 B.R. 416, 422
28 (S.D.N.Y.1990). “There is no agency relationship where the alleged principal has no right of control

1 over the alleged agent.” *Morgan Guar. Trust Co. of N.Y. v. Republic of Palau*, 657 F. Supp. 1475, 1481
2 n. 2 (S.D.N.Y.1987); *see also Rubin Bros*, 119 B.R. at 422.

3 Plaintiffs here argue that there is sufficient evidence for a jury to find that the GSF who
4 committed the alleged atrocities at issue in this case were the agents of CNL, rather than traditional,
5 independent, military and police officers. Defendants counter that, at all times, the GSF acted as
6 independent government security, and were not under the control of CNL. Plaintiffs’ evidence shows
7 the following:

- 8 • “Chevron regularly made decisions about where GSF officers should provide protection
9 and the number of GSF needed for each assignment.” Opp. at 25:5-6, citing PASOF ¶¶
10 540-548.
- 11 • “Chevron had the power to require its assigned GSF officers to attend training and did
12 so when it served the company’s purposes.” Opp. at 25:8-9, citing PASOF ¶ 399.
- 13 • CNL decided when the GSF would be permitted to use CNL-leased boats and
14 helicopters, and when they would not. PASOF ¶¶ 387-398.
- 15 • Communications with Nigerian officials after the Parabe incident suggest that the GSF
16 involved acted under the control of the CNL, and not superior military or government
17 authority. For example, a Nigerian military advisor “chewed out” CNL mangers after
18 the Parabe incident for three hours. Hoffman Decl., Ex. 304 at 335:13-336. Similarly,
19 at a June 26, 1998 meeting between CNL managers and Nigerian government officials,
20 the government officials “frowned at the use of force rather than dialogue in all conflict
21 resolutions,” and “appealed to CNL to involve Government Agencies in any future
22 dialogue with the communities . . .” Hoffman Decl., Ex. 211.
- 23 • In a March 11, 1998 letter from CNL’s managing director, George Kirkland, to a Human
24 Rights Watch investigator, Kirkland stated that when CNL utilizes GSF, “CNL Security
25 insists on exercising reasonable control over those deployed to assist, ensuring that no
26 more than the minimum force required to bring a situation under control is applied.”
27 Hoffman Decl., Ex. 169, at C28912 ¶ 9.
- 28 • CNL security personnel often reported “leading” or “supervising” GSF in the course of

1 various operations, including the Parabe operation. *See e.g.*, plaintiffs' opposition to
2 defendants' statement of facts ("POSOF") (Docket No. 1417) at 7-10.

3 • CNL paid the GSF for their services, above and beyond their government salaries.

4 • CNL "had the power to rid itself of incompetent or problematic officers and . . . it did
5 so on several occasions." Opp. at 23-25, citing Hoffman Decl., Ex. 335, Osazuwa Dep.,
6 at 42:24-43:13 (On whether or not a police official was an employee of CNL: "I won't
7 say that he is an employee, I will not say that he is not an employee. . . . We can't sack
8 him, if he does anything bad, if we were to discipline him we turn him back to the police.
9 . . . We can't fire him, we return him."); *see also* POSOF at 5-6.

10 • CNL provided food and lodging to the GSF.

11 In response to plaintiffs' evidence, defendants first argue that "[p]laintiffs cite no case holding
12 that a law enforcement agency responding to reports of unlawful conduct can be found to be the agent
13 of the private person who requested intervention." Reply at 12:8-10. In support of their argument,
14 defendants cite *O'Quin v. Baptist Memorial Hospital*, 201 S.W.2d 694, 697 (Tenn. 1947), in which a
15 Tennessee court ruled that a police officer "cannot be adjudged the agent of one who calls him to aid
16 in preventing a breach of the peace, even though it may be threatened upon private premises." This
17 argument relies on an inaccurate characterization of the relationship between the GSF and CNL. It is
18 apparent that CNL and GSF had a much closer relationship than the traditional relationship between
19 private parties and law enforcement officials in this country. The GSF were on the CNL payroll, and
20 engaged in extensive security work for CNL. CNL did not simply "dial 911."

21 Another case cited by defendants, *Mahon v. Bethlehem Musikfest Assoc.*, 898 F. Supp. 310 (E.D.
22 Penn. 1995), is instructive. In *Bethlehem*, plaintiff sued a music festival organizer, the City of
23 Bethlehem, and Bethlehem police officers who worked security at the music festival, for injuries arising
24 out of his arrest for disorderly conduct at the music festival. On summary judgment, the court addressed
25 the issue of "whether Musikfest is vicariously liable for the Police Officer Defendants' actions due to
26 an agency or independent contractor relationship." *Id.* at 312. The court made the following factual
27 determinations: "Musikfest paid the City for the Police Officer Defendants' services"; the officers
28 "knew that Musikfest paid the City for their police services of crowd control and safety"; "Musikfest

1 had certain rules of its own . . . that the Police Officer Defendants were supposed to enforce . . . along
2 with local and state ordinances and laws”; each officer’s “Musikfest work assignment was made via a
3 roster system by the Fraternal Order of Police and the Police Department”; and “Musikfest did not have
4 discretion over enforcement decisions, and . . . the [officers] did not have to report or clear arrests with
5 Musikfest.” *Id.* The court concluded that “[n]one of this evidence . . . indicates that Musikfest had any
6 control over the manner in which the Police Officer Defendants performed their duties.” *Id.* at 312-13.
7 The court did find, however, “that there are genuine issues of material fact as to whether Musikfest hired
8 the Police Officer Defendants as independent contractors,” in which case, in some circumstances,
9 Musikfest could still be vicariously liable for the officers’ actions. *Id.* at 313.

10 Notably, the court in *Bethlehem* did not rule, as defendants suggest the Court should do here, that
11 hiring police officers to enforce the law can never form an agency relationship. To the contrary,
12 *Bethlehem*’s analysis suggests that under certain circumstances, even on-duty police officers can become
13 agents of private parties. Furthermore, there are more facts in this case suggesting an agency
14 relationship than in *Bethlehem*. Unlike in *Bethlehem*, here there is evidence that CNL determined the
15 work schedules and assignments of the GSF. Also, there is evidence that CNL had the discretion to
16 decide if, when, *and how* the GSF would participate in security operations. In *Bethlehem*, it appears that
17 the festival hired the officers to conduct security, then let the officers do so how they desired, exercising
18 their own discretion. Unlike in *Bethlehem*, here there is “evidence . . . indicat[ing] that [CNL] had []
19 control over the manner in which the [GSF] performed their duties.” *Id.* at 312-13.
20 *Bethlehem* therefore does not compel the Court to find an absence of agency.

21 Defendants also argue that “if it were possible to make an entire police department or branch of
22 the military one’s agent, no evidence exists that CNL did so.” Reply at 12:19-20. Again, defendants
23 mischaracterize plaintiffs’ argument. Plaintiffs do not seek to show, and are not required to show, that
24 the entire Nigerian military served as CNL’s agent. Plaintiffs seek only to show that the particular GSF
25 members CNL paid, housed, and allegedly controlled, were agents of CNL, rather than traditional,
26 independent government security forces. As discussed above, plaintiffs have provided evidence of such
27 a relationship. The Court finds that plaintiffs have raised a triable issue of fact as to whether CNL had
28 “a right of control” over the GSF it hired. Plaintiffs’ agency theory therefore survives.

1

2 **II. Law enforcement reporting privilege**

3 Defendants' second overarching argument is that CNL's communications with, and support of,
4 the GSF, are absolutely privileged under California law. Defendants are correct that under California
5 law, "the overwhelming majority of cases conclude that when a citizen contacts law enforcement
6 personnel to report suspected criminal activity and to instigate law enforcement personnel to respond,
7 the communication also enjoys an unqualified privilege under section 47(b)" of the California Civil
8 Code. *Hagberg v. Cal. Fed. Bank FSB*, 32 Cal. 4th 350, 364 (Cal. Sup. Ct. 2004). This privilege also
9 appears to apply to communications with foreign law enforcement personnel. *See Beroiz v. Wahl*, 84
10 Cal. App. 4th 485 (Cal. Ct. App. 2000). However, unqualified immunity applies in the foreign context
11 only "to police reports that may trigger proceedings governed by adequate procedural safeguards.
12 Absent such safeguards, only reports made in good faith, and without malice, merit protection as
13 privileged." *Id.* at 496.

14 This California Civil Code section 47 privilege is an affirmative defense. Here, defendants have
15 made no showing that CNL's communications with, and support of, the GSF, "trigger[ed] proceedings
16 governed by adequate procedural safeguards." Defendants also fail to make any showing that their
17 interactions with the GSF were "in good faith, and without malice." As such, the Court cannot grant
18 summary judgment for defendants based on the law enforcement reporting privilege defense.

19
20 **III. Claims 11 and 12: assault and battery**21 **A. Parabe (Nigerian law)**

22 Nigerian law applies to the incidents that occurred on the Parabe barge. The parties appear to
23 agree that under Nigerian law, assault is intentionally putting another person in fear of an imminent
24 battery, and battery is the intentional application of force to another person. The parties disagree,
25 however, about the burden of proof. Defendants contend that even in civil cases, the plaintiff must
26 prove assault and battery beyond a reasonable doubt. Plaintiffs respond that the burden of proof is
27 simply a preponderance of evidence. Defendants appear to be correct. In *Okuarume v. Obabokor*,
28 NSCC 286, ¶¶ 35-40 (1965), the Supreme Court of Nigeria held that the plaintiff, seeking damages in

1 a civil suit for assault, had to prove the assault beyond a reasonable doubt, based on the Nigerian
 2 Evidence Act.³ *See* Defs.' Appendix of Foreign Authorities, Ex. 15. The provisions of the Nigerian
 3 Evidence Act relevant to this case state:

4 138. (1) If the commission of a crime by a party to any proceeding is directly in issue
 5 in any proceeding civil or criminal it must be proved beyond reasonable doubt.

6 (2) The burden of proving that any person has been guilty of a crime or wrongful act is,
 7 subject to the provisions of section 141 of this Act, on the person who asserts it

8 Teukolsky Decl., Ex. 28. It thus appears that, under Nigerian law assault and battery must be proved
 9 beyond a reasonable doubt.

10 Defendants here do not contend that plaintiffs cannot make out a *prima facie* case of assault and
 11 battery. Instead, they focus on various defenses available to the GSF under Nigerian law. *See* Mot. at
 12-14. Nigerian Police Force Order No. 237 states:

13 3. A Police may use firearms under the following circumstances:

14 (a) When attacked and his life is in danger and there is no other way of
 15 saving his life;

16 (b) When defending a person who is attacked and he believes no [sic - on?] reasonable grounds that he cannot otherwise protect that person attached
 17 [sic] from death;

18 (c) When necessary [to] disperse rioters or to prevent them from committing serious offences against life and property; N.B. Remember that 12 or
 19 more people must remain riotously assembled beyond a reasonable time after the reading of the proclamation before the use of firearms can be justified;

20

21
 22 ³This Court respectfully disagrees with the Nigerian Supreme Court's holding in *Okuarume*, as it appears to be inconsistent with the Nigerian court's explanation of the relevant provision of the Nigerian Evidence Act in *Ikoku v. Oli*, All N.L.R. 194, 199-200 (1962). *See* Defs.' Appendix of Foreign Authorities, Ex. 2 at 205 (quoting passage from *Ikoku*). Nonetheless, *Okuarume* appears to be controlling Nigerian law.

23 The Court is also troubled by the fact that defendants did not cite *Okuarume* until the reply brief.
 24 In their motion, defendants stated that "[a]ssault and battery must be proved beyond reasonable doubt, even in civil cases," and cited the Babalakin Declaration in support. The Babalakin Declaration did not cite *Okuarume*, or any equivalent case. Thus, while defendants technically raised this legal argument in the original motion, the Court is troubled that they did not cite *Okuarume*, which is clearly on point, until the reply. It is, of course, possible that defendants did not become aware of *Okuarume* until after filing their motion. If, however, defendants were aware of *Okuarume* at the time they filed this motion, withholding it for reply would be unfair and improper.

1 (e) If he cannot by any other means arrest a person who takes to flight in
2 order to avoid arrest; provided the offence is such that accused may be
3 punished with death or imprisonment for 7 years or more.

4 4. With regard to 3(a) above, a Police Officer would have to prove that he was in
5 danger of losing his life or of receiving an injury likely seriously to endanger his
6 life. It would be most difficult to justify the use of firearms if attacked by an
7 unarmed man. . . . If attacked by an individual with a heavy stick or machets
8 [sic], he would have to prove that he could not disable him with his baton or rifle
9 butt and that other means available to him were not sufficient to protect his life.

10

11 6. Fire should be directed at the knees of the rioters. . . .

12

13 8. As to 3(c) [sic - 3(e)] above, firearms should only be used if there are not
14 other means of effecting his arrest, and the circumstances are such that his
15 subsequent arrest is unlikely. A constable who cannot effect such a criminal's
16 arrest by any other means should warn the criminal that unless he stops and
17 surrenders, he will fire upon him. If the criminal fails to stop, the constable is
18 then justified in firing at the criminal.

19 Babalakin Decl., Ex. 36.

20 The Nigerian Criminal Procedure Act provides, in relevant part:

21 3. In making an arrest the police officer or other person making the same shall
22 actually touch or confine the body of the person to be arrested, unless there be
23 a submission to the custody by word or action.

24

25 53. (1) Every police officer may interpose for the purpose of preventing, and shall
26 to the best of his ability prevent, the commission of any offence.

27 Babalakin Decl., Ex. 34.

28 The Nigerian Criminal Code Act provides, in pertinent part:

29 69. When three or more persons, with intent to Carry out some Common purpose,
30 assemble in such a manner or, being assembled, conduct themselves in such a
31 manner, as to cause persons in the neighbourhood to fear on reasonable grounds
32 that the persons so assembled will tumultuously disturb the peace, or will by
33 such assembly needlessly and without any reasonable occasion provoke other
34 persons tumultuously to disturb the peace, they are an unlawful assembly.

35

36 72. Any magistrate or, in his absence, any police officer, of or above the rank of
37 assistant superintendent, or any commissioned officer in the Naval, Military or
38 Air Forces of Nigeria in whose view a riot is being committed, or who
39 apprehends that a riot is about to be committed by persons assembled within his
40 view, may make or cause to be made a proclamation in the name of the Federal

Republic in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

Dispersion of rioters after Proclamation made.

73. If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer, or any other person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

261. It is lawful for a person . . . in making any arrest, and for any person lawfully assisting him, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

271. When a peace officer or police officer is proceeding lawfully to arrest, with or without warrant, a person for an offence which is a felony, and is such that the offender may be arrested without warrant, and the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the peace officer or police officer and for any person lawfully assisting him, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested, and, if the offence is such that the offender may be punished with death or with imprisonment for seven years or more, may kill him if he cannot by any means otherwise be arrested.

276. It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportioned to the danger to be apprehended from its continuance.

277. It is lawful for a peace officer to use or order to be used such force as he believes, on reasonable grounds, to be necessary in order to Suppress a riot, and is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

279. When any person, whether subject to military law or not believes on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a peace officer, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary for the suppression of the riot and as is reasonably proportioned to the danger which he believes on reasonable grounds, is to be apprehended from [] its continuance.

1 280. It is lawful for a person who is bound by the laws in force relative to the armed
2 forces of Nigeria or to the police forces to obey the lawful commands of his
3 superior officer, to obey any command given him by his superior officer, in order
4 to the suppression of a riot, unless the command is manifestly unlawful.
5 Whether any particular command is or is not manifestly unlawful is a question
6 of law.

7 Babalakin Decl., Ex. 25.

8 Section 239 of the Nigerian Armed Forces Act provides:

9 No action, prosecution or other proceeding shall lie against a person subject to service
10 law under this Act for an act done in pursuance or execution or intended execution of
11 this Act or any regulation, service duty or authority or in respect of an alleged neglect
12 or default in the execution of this Act, regulation, duty or authority, if it is done in aid
13 to civil authority or in execution of military rules.

14 Babalakin Decl., Ex. 3.

15 With respect to the incidents on the Parabe barge, defendants contend that “in each shooting on
16 the barge, the [victims] were approaching the military, screaming, running or with raised objects in their
17 hands. In the context of a riot, that conduct is sufficiently threatening to justify the military’s decision
18 to shoot. Plaintiffs cannot establish to [sic] contrary beyond a reasonable doubt.” Mot. at 13:21-24.
19 This argument misconstrues the burdens of the parties. Under Nigerian law, defendants have the burden
20 of proving self-defense. *See* Nigerian Evidence Act § 141(1) (Teukolsky Decl., Ex. 28) (“Where a
21 person is accused of any offence the burden of proving the existence of circumstances bringing the case
22 within any exception or exemption from, or qualification to, the operation of the law creating the offence
23 with which he is charged is upon such person.”).

24 Moreover, defendants’ self-defense theory relies on the fact that plaintiffs were engaged in a riot,
25 or unlawful assembly. Just as plaintiffs must prove assault and battery beyond a reasonable doubt, so
26 must defendants prove the crime of unlawful assembly beyond a reasonable doubt. At this stage,
27 therefore, defendants have the burden of establishing that there is no issue as to whether the GSF acted
28 properly in self-defense, in the context of a riot.⁴ Under Nigerian Law, to establish that the protest on
the barge constituted a “riot,” defendants must establish that the protestors caused reasonable fear that

26
27 ⁴Defendants also mistake the burdens with respect to Bassey Jeje, stating “Jeje cannot show that
28 the military did not believe that he posed a threat when they found him hiding.” Mot. at 13:24-25. It
is defendants’ burden to establish that the GSF believed Jeje to be a threat justifying use of force. *See*
Nigerian Evidence Act § 141(1) (Teukolsky Decl., Ex. 28).

1 they would “tumultuously disturb the peace” *See* Criminal Code Act § 69 (Babalakin Decl., Ex.
2 25). Defendants have not provided the Court with a definition of “tumultuously disturb the peace,”
3 under Nigerian law. Furthermore, the parties clearly dispute whether the protestors on the barge were
4 peaceful. *See, e.g.*, Docket 1417 at 21:15-23:5, 26:12-27:28. This alone prevents a finding of summary
5 judgment in favor of defendants on the basis of their affirmative defense.

6 Moreover, even if defendants can establish that the protest on the barge constituted a riot, they
7 also have the burden of establishing that the GSF only “used such force as he believes, on reasonable
8 grounds, to be necessary in order to Suppress a riot, and is reasonably proportioned to the danger which
9 he believes, on reasonable grounds, is to be apprehended from its continuance.” Criminal Code Act §
10 277 (Babalakin Decl., Ex. 25). Again, the parties provide conflicting evidence as to whether the force
11 used by the GSF was “necessary” and “reasonably proportioned to the danger.” *See, e.g.*, Docket 1417
12 at 36:27-37:14, 38:12-39:2; PASOF ¶¶ 268-270.

13 For example, with respect to Arolika Irowarinun, who was shot and killed by the GSF,
14 defendants contend that the undisputed evidence establishes that he was shot while “advancing with [a]
15 metal bar[] raised in a ‘strike position.’” Reply at 5:5-6. Plaintiffs respond with evidence that
16 Irowarinun was shot in the side of the chest, “from which a jury could infer that the was turning away
17 from impending gunfire just before being shot.” Opp. at 7:19-21. Defendants reply with evidence that
18 Irowarinun was “moving in on the soldier at an angle” when the soldier shot him. Reply at 5:14 (citing
19 evidence that the “military man was facing ‘at a different angle’ and turned just in time to fire,” and that
20 the victim came “in from the military person’s ‘right side.’”). That he was shot in the side, defendants
21 contend, is therefore consistent with the self-defense theory. However, defendants’ interpretation of the
22 evidence is not the only reasonable one. The only way Irowarinun could have been shot in the side
23 while running at the shooter is if he was running sideways, which is unlikely. That he was approaching
24 the shooter “at an angle,” suggests only that the shooter had to pivot in order to shoot him. Plaintiffs
25 have thus raised a triable issue as to whether the GSF acted in self-defense when they shot Irowarinun.

26 With respect to Larry Bowoto, it appears undisputed that he was unarmed when the soldiers shot
27 him. Even taking as true defendants’ assertion that Bowoto “ran toward the soldiers with arms extended
28 screaming,” Reply at 7, there is a triable issue as to whether this justified the GSF’s use of force against

1 him under the Criminal Code Act and other provisions of Nigerian law discussed above.

2 It also appears that under Nigerian law, before force is used to disperse rioters, a “proclamation”
3 must be made. *See* Criminal Code Act §§ 72-73 (Babalakin Decl., Ex. 25). Defendants here present
4 no evidence of any such proclamation. There are, therefore, many issues of material fact which preclude
5 summary judgment.

6 Defendants also argue that, as to the alleged beating of Bola Oyinbo by the GSF after he was
7 arrested on the barge, plaintiffs present no evidence connecting CNL to the beatings.⁵ The Court finds
8 that the evidence discussed above, in the general aiding and abetting discussion, is sufficient to allow
9 a jury to reasonably conclude that CNL had knowledge that arrested protestors would be abused.

10 In sum, defendants have failed to establish that there is no issue of material fact as to their law
11 enforcement privilege and self-defense affirmative defenses, and summary judgment is therefore
12 inappropriate.

13

14 **B. Opia and Ikenyan (California law)**

15 California law applies to the tort claims arising from the incidents at Opia and Ikenyan. *See*
16 Order 1204. The parties agree that California law on assault and battery mirrors that of Nigeria, except
17 that California law’s burden of proof is only a preponderance of the evidence.

18

19 **1. John Ikenyan, Smart Iteimor, Benson Edekou, Henry Pabulogba and**
20 **Anthony Lawuru**

21 Defendants argue that the claims of John Ikenyan, Smart Iteimor, Benson Edekou, Henry
22 Pabulogba and Anthony Lawuru are time barred. In the concurrently pending motions to dismiss and
23 strike portions of plaintiffs’ Eighth Amended Complaint (“EAC”), defendants make the same argument,
24 except as to John Ikenyan. The Court addresses this issue in the Order on those motions. This issue is
25 therefore moot with respect to all but John Ikenyan. As to John Ikenyan, the Court agrees with
26 defendants that his claims are time-barred, for the same reasons discussed in the concurrent Order with

27 ⁵The parties discuss the beating of Oyinbo under the Nigerian law section. Though probably
28 irrelevant at this point, it appears to the Court that California law should apply to the alleged beating
of Oyinbo, as it occurred on land. *See* Order 1204.

1 respect to the other four individuals.

2

3 **2. Survival claims**

4 Defendants argue that only personal representatives can bring survival claims on behalf of the
5 decedents. The Court addresses and rejects this argument in the Order on defendants' motion to dismiss
6 and strike portions of the EAC.

7 Defendants also contend that there is no evidence of an assault and battery on decedent Timi
8 Okoro. In opposition, plaintiffs present evidence that Benson Edekou (Timi Okoro's brother) saw
9 Okoro in a canoe as the Sea Trucks carrying the GSF approached Opia and Ikenyan (which were
10 subsequently burned to the ground by the GSF in the Sea Trucks). Edekou then fled into the bush in
11 fear. *See* Teukolsky Decl., Ex. 23 at 300:1-22, 323:25-324:23. Okoro was never seen again. *Id.* at
12 348:2-349:13, 344:1-346:21; Filios Decl., Ex. 47 at 126-132, Ex. 17 at 542-543. This evidence,
13 plaintiffs contend, coupled with general evidence of the attacks by the GSF on Opia and Ikenyan, is
14 sufficient to allow a reasonable jury to infer that the GSF in the Sea Trucks were responsible for Okoro's
15 death or disappearance. The Court agrees. *See, e.g., People v. Scott*, 176 Cal. App. 2d 458 (Cal. Ct.
16 App. 1959) (upholding a murder conviction based solely on circumstantial evidence, where the victim's
17 body was not recovered, there was no confession, and no other direct evidence of death or murder).

18 In support of summary judgment on Timi Okoro's claim, defendants cite *Wolf v. Reynolds Elec.*
19 and *Eng'g Co.*, 304 F.2d 646 (9th Cir. 1962), in which the Ninth Circuit upheld the trial court's entry
20 of judgment of dismissal in favor of defendants. In *Wolf*, the plaintiff sought to recover damages for
21 personal injuries arising from a collision between plaintiff's truck and defendant's flatbed truck, upon
22 which a crane was sitting. After plaintiff put on his case to the jury, defendant moved for entry of
23 judgment pursuant to Federal Rule of Civil Procedure 41. The court granted defendant's motion. On
24 appeal, the Ninth Circuit stated:

25 Each of appellant's contentions is predicated upon the assumption that the crane must
26 have protruded beyond the left side of defendants' truck and trailer and thereby caused
27 the accident. Before plaintiff may recover, however, there must be substantial proof that
28 the crane did in fact protrude and cause the accident. True, this may be established by
circumstantial evidence; but we agree with the trial court that there was insufficient
evidence, either direct or circumstantial, to justify a finding by a jury that the accident
was caused in this manner.

1 The most a jury could conclude from the evidence was the possibility that the accident
2 was caused by something overhanging from defendants' trailer. There is evidence which
3 tends to negative that possibility. The marks and scratches on the front outside dual and
4 the trailer bed, as well as the lack of evidence of any marks or damage to the crane or the
5 steel I-beam structure, are inconsistent with appellant's theory. The evidence suggests
6 other possibilities equally as credible as that advanced by appellant. The finding of
7 negligence by a jury would be a choice of possibilities based on a foundation of
8 speculation and conjecture.

9 *Id.* at 649.

10 *Wolf* is distinct from this case. In *Wolf*, there was evidence "tend[ing] to negative" the inference
11 plaintiff wished the jury to draw from the circumstantial evidence. In contrast, here defendants have
12 provided no evidence inconsistent with the reasonable inference that the Sea Trucks seen driving past
13 Timi Okoro's canoe caused her death or disappearance. Plaintiffs' circumstantial evidence is therefore
14 sufficient to defeat summary judgment.

15 **IV. Negligence (Claims 14 and 15)**

16 Plaintiffs' claim 14 alleges negligent infliction of emotional distress; claim 15 alleges negligence
17 and negligence per se. Under California law, "[i]n order to prevail in an action based upon a defendant's
18 alleged negligence, a plaintiff must demonstrate that the defendant owed the plaintiff a legal duty, that
19 the defendant breached the duty, and that the breach was a proximate or legal cause of his or her
20 injuries." *Morris v. De La Torre*, 36 Cal. 4th 260, 264 (Cal. Sup. Ct. 2005). Here, plaintiffs' negligence
21 claims proceed under two general theories: (1) that CNL is directly liable for its own negligent actions
22 – its direct participation in the attacks and its hiring of the GSF; and (2) that CNL is vicariously liable
23 for the negligent actions of the GSF.

24 **A. Duty**

25 Defendants' principal argument is that plaintiffs cannot establish that defendants owed plaintiffs
26 any duty. In determining whether a defendant owed a plaintiff a duty, courts in California look at
27 several factors.

28 These factors are "the foreseeability of harm to the plaintiff, the degree of certainty that
29 the plaintiff suffered injury, the closeness of the connection between the defendant's
30 conduct and the injury suffered, the moral blame attached to the defendant's conduct, the
31 policy of preventing future harm, the extent of the burden to the defendant and

1 consequences to the community of imposing a duty to exercise care with resulting
2 liability for breach, and the availability, cost, and prevalence of insurance for the risk
involved.”

3 *Id.* at 276 (quoting *Rowland v. Christian*, 69 Cal. 2d 108, 113 (Cal. Sup. Ct. 1968)).

4 Defendants do not explicitly argue these factors, but instead focus on a largely policy-based
5 argument that “the law imposes no duty to refrain from reporting crime or providing assistance to the
6 law enforcement authorities.”⁶ Mot. at 16:20-21. Under California law, however, it appears that in
7 certain circumstances, a defendant may have a duty to “refrain from reporting crime.” As the Supreme
8 Court of California explained in *Morris*, 36 Cal. 4th at 277, “neither a business proprietor nor his or her
9 employees have an absolute obligation to call 911 in the face of ongoing criminal conduct: in some
10 situations, doing so actually might increase the danger to customers or invitees or might unreasonably
11 place proprietors or their employees in danger.” Thus the act of seeking help from, or providing help
12 to, law enforcement, under circumstances where doing so “might increase the danger” to those to whom
13 a duty is owed, might constitute negligence.

14 This conclusion, however, does not answer whether defendants had any duty towards plaintiffs.
15 With respect to the Parabe protestors, defendants argue that they owed plaintiffs no duty “because
16 [under Nigerian law] the occupier of premises owes no duty of care to trespassers save to refrain from
17 deliberately or recklessly causing harm.” Mot. at 15-16. Defendants’ argument, however, stops there.
18 They do not argue that plaintiffs have failed to present evidence that defendants “deliberately or
19 recklessly” caused harm to plaintiffs. There is therefore a genuine issue as to whether defendants
20 deliberately or recklessly caused harm to plaintiffs by seeking the assistance of, and providing assistance
21 to, the GSF in relation to the Parabe incident.

22 Defendants also attack plaintiffs’ allegation that CNL negligently supervised and failed to train
23 the GSF. *See* EAC ¶ 186. Defendants argue that plaintiffs cannot show that a private party has a legal
24 obligation to supervise and train public law enforcement personnel. Defendants also argue that plaintiffs
25 cannot show that CNL’s alleged failure to adequately train or supervise the GSF proximately caused
26 plaintiffs’ injuries. In opposition, plaintiffs blend the supervision and training issues into their argument

27
28 ⁶Though defendants frame this argument as relating to whether they had a duty to plaintiffs, it relates also to the question of breach.

1 that defendants negligently hired and retained the GSF. In order for this theory to succeed, plaintiffs
2 must establish that CNL had hiring and supervisory power over GSF. As discussed above, plaintiffs
3 present evidence that the GSF were the equivalent of employees or private security contractors for CNL.
4 CNL paid the GSF, housed them, supervised them, transported them, and had the authority to train them
5 and remove particular individual soldiers from service. *See PASOF ¶¶ 437-460, 475-503, 387-399;*
6 Docket 1417 at 5:15-6:25, 7:3-12:4. From this evidence, a jury could conclude that CNL had the power
7 to hire, supervise, and train the GSF, and that CNL did so, or failed to do so, negligently. A jury could
8 also conclude from this evidence, and all of the evidence related to the attacks, that CNL's hiring, and
9 failure to properly train and supervise, the GSF, proximately caused the alleged injuries of the victims.
10

11 **B. Negligence per se**

12 Plaintiffs base their negligence per se theory on a provision of the Nigerian Civil Aviation
13 Regulations which requires that all "weapons of war and munitions of war" be "[s]towed in the aircraft
14 in a place which is inaccessible to passengers during flight; and . . . unloaded . . ." Teukolsky Decl.,
15 Ex. 36. In response, defendants contend, and the Court agrees, that the Nigerian Armed Forces Act
16 exempts soldiers from the Civil Aviation Regulations.⁷ Section 237 of that Act provides: "A member
17 of the Armed Forces shall for the purposes of the Armed Forces be exempt from a provision of any
18 enactment relating to the storage, possession or transmission of firearms, explosives, gun-powder or
19 ammunition of war." *See Babalakin Decl., Ex. 3.* The Court therefore GRANTS defendants' motion
20 for summary judgment on plaintiffs' negligence per se theory.
21

22 **C. Negligent Infliction of Emotional Distress (NIED)**

23 Under California law, "there is no duty to avoid negligently causing emotional distress to
24 another." *Potter v. Firestone Tire and Rubber Co.*, 6 Cal. 4th 965, 984 (Cal. Sup. Ct. 1993).
25 "[D]amages for emotional distress are recoverable only if the defendant has breached some other duty
26

27 ⁷Defendants also complain that as evidence of the Regulations, plaintiffs have provided only an
28 excerpt from the Pan African Airlines operating manual, rather than a copy of the actual Regulation.
This argument is moot.

1 to the plaintiff.” *Id.* In other words, a negligent infliction of emotional distress (“NIED”) claim is a
2 negligence claim, where the breach of duty proximately causes emotional distress. “The tort is
3 negligence, a cause of action in which a duty to the plaintiff is an essential element.” *Id.* “[U]nless the
4 defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object,
5 recovery is available only if the emotional distress arises out of the defendant’s breach of some other
6 legal duty and the emotional distress is proximately caused by that breach of duty. Even then, with rare
7 exceptions, a breach of the duty must threaten physical injury, not simply damage to property or
8 financial interests.” *Id.* *Potter* thus established two ways in which a plaintiff can establish NIED: (1)
9 a “direct” claim, where the defendant assumes a duty to avoid causing emotional distress (such as in a
10 psychiatrist-patient relationship); and (2) an “indirect” claim, where the defendant breaches some other
11 duty, and that breach proximately causes emotional distress (such as a “bystander” case). Defendants
12 here challenge plaintiffs’ ability to proceed under either theory.

13 With respect to “direct” claims, the Court agrees with defendants that plaintiffs have not
14 presented evidence that defendants owed plaintiffs a special duty toward their emotional condition. The
15 Court finds that plaintiffs, have, however, provided sufficient evidence to proceed under a bystander
16 theory of NIED. To establish a claim for emotional distress caused by observing the negligently
17 inflicted injury of a third person, plaintiffs must prove: (1) that plaintiffs are closely related to the
18 victim; (2) that plaintiffs were present at the scene of the injury-producing event, at the time it occurred,
19 and were then aware that it was causing injury to the victim (as opposed to learning of the accident from
20 others after its occurrence); and (3) that as a result, plaintiffs have suffered serious emotional distress
21 beyond that which would be experienced by a disinterested bystander. *See Thing v. LaChusa*, 48 Cal.
22 3d 644 (1989).

23 Defendants first argue that defendants owed no duty to the victims whose injuries were
24 witnessed. As discussed above, this argument fails. Defendants also argue, generally, that “plaintiffs
25 still cannot recover for witnessing the injury of someone other than their ‘relatives residing in the same
26 household, or parents, siblings, children or grandparents.’” Mot. at 23:20-22. Defendants’ argument,
27 however, stops there. Defendants do not identify which claims, of which plaintiffs, fail to meet this
28 element. As such, defendants have not met their burden of production, “of identifying for the court

1 those portions of the materials on file that it believes demonstrate the absence of any genuine issues of
 2 material fact.” *T.W. Elec. Service*, 809 F.2d at 630. Plaintiffs’ NIED claim therefore survives.⁸

3

4 **V. Intentional Infliction of Emotional Distress (IIED)**

5 Under California law, “the elements of the tort of intentional infliction of emotional distress
 6 [(“IIED”)] are (1) extreme and outrageous conduct by the defendant with the intention of causing, or
 7 reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe
 8 or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the
 9 defendant’s outrageous conduct The defendant must have engaged in ‘conduct intended to inflict
 10 injury or engaged in with the realization that injury will result.’” *Christensen v. Superior Court*, 54 Cal.
 11 3d 868, 903 (1991) (*quoting Davidson v. City of Westminster*, 32 Cal. 3d 197, 209-10 (1982)). “It is not
 12 enough that the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or
 13 occur in the presence of a plaintiff of whom the defendant is aware.” *Christensen*, 54 Cal. 3d at 903.

14 In order for conduct to be considered “extreme and outrageous,” the “[c]onduct [] must be so
 15 extreme as to exceed all bounds of that usually tolerated in a civilized community.” *Cervantez v. J. C.*
 16 *Penney Co.*, 24 Cal. 3d 579, 593 (Cal. Sup. Ct. 1979). This standard sets a very high bar; it is “the
 17 California rule that ‘it is not enough that the defendant has acted with an intent which is tortious or even
 18 criminal, or that he has intended to inflict emotional distress, or even that his conduct has been
 19 characterized by ‘malice’ or a degree of aggravation which would entitle the plaintiff to punitive
 20 damages for another tort.’” *Pardi v. Kaiser Permanente Hosp., Inc.*, 389 F.3d 840, 852 (9th Cir. 2004)
 21 (*quoting case*). This “rule is of course easy to state but only can be applied with certainty in light of the
 22 holdings in decided cases which have determined that the questioned conduct before them was or was
 23 not outrageous.” *Soto v. Royal Globe Ins. Co.*, 184 Cal. App. 3d 420 (Cal. Ct. App. 1986).

24 Defendants first argue that the conduct of CNL, alone, does not constitute “extreme and

25

26 ⁸In the concurrent Order regarding the EAC, the Court dismisses the Parabe plaintiffs’ claims
 27 for NIED, IIED, civil conspiracy, and loss of consortium. As discussed above, the Court holds in that
 28 Order that the tort claims of John Ikenyan, Smart Itiemor, Anthony Lawuru, Henry Pabulogba, and
 Benson Edeku are time barred. Plaintiffs also concede that Ola Oyinbo does not assert an NIED claim.
See Opp. at 23 n.28.

1 “outrageous” conduct. Neither party cites any case to which they claim CNL’s conduct is analogous.⁹
2 Applying the plain language of the “extreme and outrageous” rule, as described by the courts, the Court
3 finds that plaintiffs have presented sufficient evidence for a reasonable jury to find that CNL’s conduct
4 “exceed[ed] all bounds of that usually tolerated in a civilized community.” As discussed, plaintiffs
5 present evidence that CNL provided the GSF with food, money, transportation, and supervision, all
6 while knowing that the GSF were likely to engage in the use of excessive force against civilians. A
7 civilized community does not tolerate actively helping others, even law enforcement officials, to
8 perpetrate unnecessary violence against innocent civilians – and plaintiffs have presented sufficient
9 evidence to allow a jury to find that this is what CNL did.

10 Defendants also argue that plaintiffs cannot establish the requisite intent for IIED liability. IIED
11 liability attaches where the defendant intended to cause emotional distress, or “when the defendant is
12 aware, but acts with reckless disregard, of the plaintiff and the probability that his or her conduct will
13 cause severe emotional distress to that plaintiff.” *Christensen*, 54 Cal. 3d at 905. “It is enough that
14 defendant ‘devoted little or no thought’ to the probable consequences of his conduct.” *KOVR-TV, Inc.*
15 *v. Superior Court*, 31 Cal. App. 4th 1023, 1031-32 (Cal. Ct. App. 1995) (quoting case). Here,
16 defendants submit the statements of CNL employees involved in the incidents, swearing that they did
17 not intend for anyone to be injured. In opposition, plaintiffs argue that they have presented sufficient
18 evidence for a jury to find that CNL acted in “reckless disregard,” or “devoted little or no thought to the
19 probable consequences” of their conduct. The Court agrees with plaintiffs. As discussed, plaintiffs
20 present evidence that CNL knew of the likelihood that the GSF would respond with unnecessary
21 violence, and despite this knowledge, CNL provided active support to the GSF.

22 A reasonable jury could also find that the conduct of the GSF itself was “extreme and
23 outrageous.” Plaintiffs’ claim therefore also survives based on secondary liability theories, as discussed
24 above.

25 ⁹In their Reply brief, defendants cite *Davidson v. City of Westminster*, 32 Cal. 3d 197, 210
26 (1982), in support of their argument that CNL’s conduct was not extreme and outrageous. In *Davidson*,
27 however, the court found there was no “extreme and outrageous” conduct because the defendants did
28 not intend to harm the plaintiff. Here, as discussed below, there is evidence of intent. Furthermore, the
 defendants in *Davidson* were accused of merely failing to prevent a crime that was occurring; they were
 not accused, as here, of aiding in the commission of the crime.

1 **VI. Loss of consortium**

2 In light of the concurrently issued Order re: plaintiffs' Eighth Amended Complaint, this issue
3 appears to be moot.

4

5 **VII. Survival Actions**

6 **A. The Irowarinuns (Nigerian law)**

7 Defendants argue that under Nigerian law, because the actions of defendants caused Arolika
8 Irowarinun's death, the damages recoverable for his death through the survival claims are limited to
9 funeral expenses. Under the Administrations of Estates Law (AEL) of Ondo State, damages recoverable
10 for the benefit of the decedent "shall not include any exemplary damages." Babalakin Decl., Ex. 84,
11 § 15(2)(a). Furthermore, "where the death of that person has been caused by the act . . . which gives
12 rise to the cause of action," then damages "shall be calculated without reference to any loss or gain to
13 his estate consequent on his death, except that the sum in respect of funeral expenses may be included."
14 *Id.* § 15(2)(c). Both parties also cite Chapter 34 of *McGregor on Damages*, in which the author
15 confirms that, with the exception of funeral expenses, in a survival action the estate cannot collect for
16 "losses of the deceased which are still in the future at the time of his death . . ." Babalakin Decl., Ex.
17 169 ¶ 1251.

18 However, although the estate cannot recover loss of prospective earnings, loss of prospective
19 amenities of life, or loss of prospective expectation of life, the estate can collect for damages to the
20 decedent accruing between the time of the injury and death. *See id.* ¶¶ 1251-1264; Babalakin Decl.,
21 Ex. 84, § 15. Here, plaintiffs present evidence that Arolika Irowarinun was not immediately killed when
22 the GSF shot him. An eyewitness, Damilohun Osupayojo, testified at deposition that he saw Irowarinun
23 get shot, then saw him grasp the clothes on his chest, and fall. *See* Teukolskly Decl., Ex. 18 at 70:18-
24 71:25, 72:12-17. In reply, defendants contend that Osupayojo testified that he did not actually see
25 Irowarinun get shot, but only saw him grasp his clothes and fall. Osupayojo also testified that he did
26 not immediately recognize the person who he saw grasp his clothes and fall. Instead, Osupayojo
27 identified the person as Irowarinun only after Osupayojo emerged from his hiding place. *See* Filios
28 1/19/07 Decl., Ex. 205 at 589:12-22. The person Osupayojo saw grasp his clothes and fall, defendants

1 contend, therefore could have been the other shooting victim, Joli, who is not a plaintiff. The credibility
2 and weight deserved by Osupayojo's testimony are determinations the jury must make. Osupayojo's
3 testimony that he saw Irowarinun get shot, saw him grasp his chest, and saw him fall, is sufficient to
4 raise a triable issue as to whether Irowarinun suffered any pain before he died. The Court cannot
5 therefore grant defendants' motion for summary judgment on the Irowarinun plaintiffs' request for pain
6 and suffering damages.

7

8 **B. Opia and Ikenyan survival claims**

9 Defendants first argue that plaintiffs present no evidence that Timi Okoro was injured or killed.
10 As discussed above, there is sufficient circumstantial evidence of Timi Okoro's forced disappearance
11 to support tort claims on her behalf. With respect to the other three individuals killed in the attacks,
12 defendants argue that plaintiffs have no evidence that decedents did not die immediately from their
13 wounds. As plaintiffs point out, however, there is sufficient evidence for a jury to conclude that all
14 residents of Opia and Ikenyan, including decedents, were put in fear of battery, i.e., were assaulted, by
15 the GSF. Plaintiffs may therefore bring survival claims for assault on behalf of the Opia and Ikenyan
16 decedents.

17 Defendants also argue that plaintiffs have no evidence that any of decedents' property was
18 destroyed before they were shot and killed. The Court agrees. Plaintiffs present evidence that houses
19 in the villages began to catch fire as a result of the helicopter attack, *see* Teukolsky Decl., Ex. 20 at
20 574:21-575:3, 578:1-14; Ex. 22 at 427:20-428:5; Ex. 23 at 291:2-6, 292:1-22, 294:17-295:8, but
21 plaintiffs' evidence does not specifically establish that decedents' houses caught on fire before they
22 were killed. Plaintiffs cannot therefore seek damages for lost property under their survival claims.

23

24 **VIII. Wrongful Death Claims**

25 Defendants contend that plaintiffs' wrongful death claims fail because plaintiffs cannot show
26 that CNL caused the deaths of decedents. As discussed above, plaintiffs have presented sufficient
27 evidence to raise a triable issue whether CNL is liable both for its own negligence, and for the GSF's
28 actions, which resulted in the deaths at issue. The Court therefore DENIES defendants' motion for

1 summary judgment on plaintiffs' wrongful death claims.
2

3 **IX. Releases**

4 Defendants' final argument is that, in exchange for 450,000 Naira, Sunday Johnbull Irowarinun
5 and his family released CNL from all liability arising out of the Parabe incident. In support of this
6 argument, defendants present a document entitled "Chevron Nigeria Limited: Receipt and Indemnity,"
7 which was signed by "Sunday Sebi Irowaninnu," on August 14, 1998. *See* Filios Decl., Ex. 68. The
8 document describes the Parabe incident, from CNL's perspective, then states:

9 As a result of discussions between representatives of Chevron, the Ondo State
10 Government and the Ilaje Community and appeals for assistance in aid of the injured
11 youths and the bereaved families of the youths who died, Chevron has agreed to make
12 an ex gratia donation to the families of the deceased.
13

14 . . .
15 It is understood that this payment is a goodwill gesture on the part of Chevron and that
16 Chevron is not responsible for and has denied liability for the loss suffered by the
17 affected families. We hereby UNDERTAKE on behalf of the Irowarinun family that no
18 claim shall be made against Chevron as a result of this incident

19 Further, we hereby INDEMNIFY AND HOLD HARMLESS, Chevron, its contractors
20 and their agents and servants from and against all proceedings, claims, expenses, liability
21 and costs (including attorney's fees) arising out of the said incident as described above.
22

23 *Id.*

24 There are numerous problems with defendants' contention that this document constitutes a valid
25 and enforceable release of claims. First, it is apparent that Sunday Irowarinun does not speak or read
26 English, and certainly not to the degree necessary to understand a complex legal document such as this
27 one. *See* Teukolsky Decl., Ex. 26 at 135:15-137:2, 141:1-10, 143:1-13, 144:7-15, 150:1-15. Nobody
28 translated the document for him before he signed it, and CNL did not tell him that it contained a release.
29 *See id.* at 148:4-149:12, 263:2-10. Mr. Irowarinun therefore could not have had the intent to release
30 claims against CNL. Furthermore, there is evidence that Mr. Irowarinun signed the document under
31 duress or undue influence. He signed the document at a meeting with Chevron, which he attended in
32 order to request the return of his son Arolika's corpse. *See id.* at 122-134. He testified that he was told
33 at the meeting that if he did not accept the money from CNL, his son's body would not be returned to
34 him and instead they would "just dump that corpse somewhere." *Id.* at 129:2-6.

1 Defendants also argue that, in exchange for 15,000,000 Naira and rice, beans, blankets, and other
2 relief materials, the “representatives of the Opia and Ikenyan villages released CNL from all liability
3 arising from” the attacks on Opia and Ikenyan. Mot. at 20-22, citing Filios Decl., Ex. 73. As with the
4 Irowarinun release, the Opia and Ikenyan release suffers from several serious questions as to its validity
5 and enforceability. First, though the agreement is purportedly “signed on behalf of Opia and Ikenyan
6 communities” by six community leaders, defendants present no definitive evidence that the signers of
7 the document had the authority to bind all the members of the community. In response, defendants
8 argue that the community members “ratified the releases by accepting their share of the 15 million
9 Naira,” Reply at 18:20-21. However, defendants provide no legal authority for the proposition that by
10 accepting the proceeds of a purported settlement agreement, the villagers agreed to a settlement
11 agreement which they did not sign.

12 Secondly, the Opia and Ikenyan release is only an agreement by the “Communities” to release
13 Chevron from liability. *See id.* It says nothing of the claims of individual community members. The
14 document could thus be interpreted as analogous to an agreement by the City of Oakland to release its
15 claims against a corporation. Such an agreement would not constitute a release of any individual claims
16 brought by residents of the Oakland community.

17 Additionally, there is some indication that the Opia and Ikenyan release was signed under duress
18 or undue influence. As the supplies provided along with the money (blankets, pillows, and mattresses)
19 indicate, at the time the document was signed, the communities and their members may have been
20 literally fighting for survival. *See* Teukolsky Decl., Ex. 22 at 538:11-21, 540:1-6; Ex. 23 at 425:1-10;
21 Ex. 24 at 459:7-14, 497:4-12.

22 Regardless of whether Nigerian or California law applies to analyzing the validity of the
23 agreements, there are serious questions as to their enforceability. Summary judgment, based on the two
24 “releases,” is therefore inappropriate.

25
26

27 CONCLUSION

28 For the foregoing reasons and for good cause shown, the Court hereby GRANTS IN PART

1 defendants' motion for summary judgment on plaintiffs' claims 10 through 17 of the Eighth Amended
2 Complaint, as discussed above.

3

4 **IT IS SO ORDERED.**

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6 Dated: August 13, 2007

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Susan Illston
SUSAN ILLSTON
United States District Judge